No. 87-549

In The
Supreme Court of the United States
October Term, 1987

CITY OF EVANSTON, a municipal corporation, JOAN W. BARR, ANN RAINEY and NORRIS LARSON,

Petitioners,

v.

REGIONAL TRANSPORTATION AUTHORITY, a municipal corporation, SUBURBAN BUS DIVISION of the REGIONAL TRANSPORTATION AUTHORITY, a municipal corporation, NATIONAL STEEL SERVICE CENTER, INC., a New Jersey corporation and the URBAN MASS TRANSPORTATION ADMINISTRATION, a division of the UNITED STATES DEPARTMENT OF TRANSPORTATION,

Respondents.

Petition For a Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS FOR REVIEW RESTATED

1. Whether the Seventh Circuit Court of Appeals was correct in affirming the district court's order dismissing the plaintiffs' complaint for lack of standing?

2. Whether the plaintiffs' complaint sufficiently alleged environmental damage in the change in use of the subject property from a steel business to a bus garage?

STATEMENT REQUIRED BY RULE 28.1

Respondents, Regional Transportation Authority, and Pace Suburban Bus Division of the Regional Transportation Authority are municipal corporations which has no parent company, nor any affiliates or subsidiaries.

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Respondents, Regional Transportation Authority and Pace Suburban Bus Division of the Regional Transportation Authority respectfully request that the Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit be denied.

OPINIONS BELOW

Respondents adopt the statement of the Opinions Below set out in the Petition for Writ of Certiorari.

JURISDICTION

Respondents agree that the judgment of the Court of Appeals for the Seventh Circuit was entered on July 10, 1987 and that no petition for rehearing was filed.

Respondents further agree that the jurisdiction of this Court was invoked pursuant to the provisions of 28 U.S.C. sec. 1254 and that the Petition for Writ of Certiorari was filed pursuant to 28 U.S.C. sec. 2101.

Respondent denies that the allegations of the complaint have invoked jurisdiction of this Court pursuant to 49 U.S. 161 et seq. 42 U.S.C. 4321 or 5 U.S.C. sec. 702 and 706 as claimed by the petitioners.

STATUTES INVOLVED

Respondent agrees that this case involves the provisions of the Urban Mass Transportation Act, and the National Environmental Policy Act. Respondent denies that this case involves the Administrative Procedures Act as claimed by the Petitioner.

STATEMENT OF THE CASE

Except as noted herein, respondent agrees with the Statement of the Case set out in the Petition for Writ of Certiorari.

Several facts which have been omitted from the petitioners' Statement of the Case are particularly noteworthy and were in fact relied on by the Seventh Circuit Court of Appeals.

The property which is the subject matter of this action was, prior to the purchase by Pace, the respondent hereto, utilized by the National Steel Service Center as a steel fabricating plant.

Furthermore, prior to the divulgence of the intent of Pace to enter into negotiations with National Steel to purchase the property, the property was zoned M-4 with no special use restrictions.

The M-4 zoning designation is the highest, most intense industrial use allowed by Evanston's zoning ordinance.

Lastly, the petitioners fail to point out that they never requested leave of Court to amend their complaint as was their right.

REASONS FOR DENYING WRIT

The plaintiff's petition for writ of certiorari should be denied because contrary to the plaintiffs assertions, the decision of the Seventh Circuit Court of Appeals upholding the district courts ruling is not in conflict with the decisions of this Court on issues of standing and pleading in the federal court. The decision of which the plaintiff seeks a writ of certiorari and reversal was based on established precedent of this Court and other Federal Courts of Appeals, and was the proper ruling given the facts as pleaded in the plaintiffs complaint.

On the issue of standing as it relates to the plaintiffs claim of harm due to federal agency action, the decision was in accord with the following cases: *Transamerica Mortgage Advisors Inc. v. Lewis* 444 U.S. 11, 100 S.Ct. 242, 62 L.Ed.2d 146 (1979), *California v. Sierra Club* 451 U.S. 287, 101 S.Ct. 1775, 68 L.Ed.2d 101 (1981), *Universities Research Association v. Coutu* 450 U.S. 754, 101 S.Ct. 1451, 67 L.Ed.2d 662 (1981), *Baker v. Carr* 369 U.S. 186, 82 S.Ct. 691 7 L.Ed.2d 663 (1962), *Valley Forge Christian College v. Americans United for Separation of Church & State Inc.* 454 U.S. 464, 102 S.Ct. 752, 70 L.Ed.2d 760 (1982), *Rapid Transit Advocates v. Southern California Rapid Transit District* 752 F.2d 373 (9th Cir. 1985), *River Road Alliance v. Corps of Engineers* 764 F.2d 445, (7th Cir. 1985) *cert. denied* 106 S.Ct. 1283 (1986), *City of West Chicago v. United States Nuclear Regulatory Commission* 701 F.2d 632 (7th Cir. 1983), *Robinson v. Knebel* 550 F.2d 422 (8th Cir. 1977).

The plaintiffs claim of error relating to issues of pleading in the federal court are framed in terms of whether the complaint stated enough facts to withstand the motion to dismiss and whether the facts as pleaded should have placed the court on notice of the plaintiffs implied claim of jurisdiction under 5 USC 702 (The Administrative Procedure Act).

The Court of Appeals correctly ruled that the plaintiff had failed to allege the APA as a basis for jurisdiction and their decision is thus in accord with FRCP (8) (a), *United States of America ex rel Keith Becker v. Simmons* 357 F.Supp. 1135, *Matherly v. Lamb* 414 F.Supp. 364, *Bowman v. White* 388 F.2d 756 and others.

The plaintiffs never sought leave to amend their complaint and cannot now claim error on an issue never raised by the pleadings. See *Lektro Vend Corp. v. Vendo Co.* 545 F.2d 1050 (7th Cir. 1976).

Notwithstanding the above matters relating to proper pleading, the decision of the Court of Appeals was in accord with this Court's holding in *Califano v. Sanders* 430 U.S. 99, 97 S.Ct. 986, 51 L.Ed.2d 192 (1977) and *Valley Forge v. Americans United* 454 U.S. 464.

The majority of the plaintiffs claims are directed at allegations of misspent federal funds which were the basis of the grant from the Urban Mass Transit Administration (UMTA) to the Suburban Bus Division of the Regional Transportation Authority. (Pace). These claims are based on the plaintiffs claimed standing as a taxpayer and were properly rejected by the Court of Appeals in accord with this Court's ruling in *Flast v. Cohen* 392 U.S. 83, 88 S.Ct. 1942 20 L.Ed.2d 947 (1968) *Schlesinger v. Reservists Committee to Stop the War* 418 U.S. 208, 94 S.Ct. 2925, 41 L.Ed.2d 706 (1974) and *Valley Forge v. Americans United* 454 U.S. 464.

Setting aside the claims of misspent federal funds which are clearly precluded by the plaintiffs lack of taxpayer standing, the remaining issues raised by the complaint are all related to local problems which are better addressed by local state courts ruling on zoning matters.

I.

THE DECISION OF THE SEVENTH CIRCUIT COURT OF APPEALS WAS NOT IN CONFLICT WITH OTHER DECISIONS OF THIS COURT.

An analysis of the cases cited by the plaintiff to stand for the proposition that the Seventh Circuit Court of Appeals' decision affirming the district court's dismissal of the action was incorrect, illustrates how those cases can be distinguished from this case. A further analysis of other cases of this Court and other federal courts will show how the decision was in accord with those decisions.

The petitioners argue that the decision of the Seventh Circuit Court of Appeals is in conflict with, among other cases, *Merrill, Lynch, Pierce, Fenner & Smith v. Curran* 456 U.S. 353, 102 S.Ct. 1825, 72 L.Ed.2d 182 (1982). That case whose holding was related to issues of standing sought the answer to a different question than that asked by the district court and the Seventh Circuit Court of Appeals in the case at bar. In *Merrill, Lynch* the Court analyzed a statute enacted with criminal penalties and later amended. The question was whether, considering the amendment, Congress intended to create private civil remedies. Since *Merrill, Lynch* was decided on the rather narrow issue of whether an amendment to a statute gave a hint of Congressional intent, the holding in that case could not be and is not in conflict with the ruling of the Court of Appeals in this case.

In *Gladstone v. Bellwood*, 441 U.S. 91, and *Arlington Heights v. Metropolitan* 429 U.S. 252, the Court was asked to rule on standing issues when a claim was made of a violation of the Fair Housing Act of 1968 (42 USCA sec. 2610 et seq) and the Civil Rights Act which by its terms "may be enforced by civil actions in appropriate United States district courts."

The questions relating to issues of standing in those cases were far removed from the issues raised by the City of Evanston in its complaint and are therefore not in conflict with the decision of the Appellate Court.

In *Cannon v. U of C* 441 U.S. 677 the Court reviewed the matter of standing as it applied to a claim of a violation of a federal statute by a private defendant, not an arm of the federal government as in the case at bar. In *Cannon* the Court applied the standard identified in *Cort v. Ash* 422 U.S. 66, 95 S.Ct. 2080 45 L.Ed.2d 26 (1975) to determine whether the plaintiff had standing. In *Cort* this Court held that the fact that a federal statute has been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person. The threshold question is whether the statute was enacted for the benefit of a special class of which the plaintiff is a member.

The Seventh Circuit Court of appeals correctly applied the facts raised by the plaintiffs and the statutes claimed to invoke the courts' jurisdiction to the standards identified in Cort to determine whether the complaint did clothe the plaintiffs with standing. The Court correctly ruled that the statutes did not imply a private right of action because among other issues, the statutes were not enacted for the benefit of a special class of which the plaintiffs were members. Therefore, not only was the decision of the Seventh Circuit Court of Appeals not in conflict with *Cannon* as the petitioners claim, but it was in accord with *Cannon* and *Cort*, the case upon which *Cannon* was based.

The Court of Appeals correctly affirmed the lower courts dismissal of this question of standing raised in *Cort v. Ash* by relying on this Court's decision in *Transamerica Mortgage Advisors Inc. v. Lewis* 444 U.S. 11, 100 S.Ct. 242, 62 L.Ed.2d 146 (1979) *California v. Sierra Club* 451 U.S. 287, 101 S. Ct. 1775, 68 L.Ed.2d 101 (1981) *Universities Research Association of Coutu* 450 U.S. 754,

101 S. Ct. 1451, 67 L.Ed.2d 662 (1981) and *Touche Ross & Co. v. Pedington* 442, U.S. 560, 99 S.Ct. 2479, 61 L.Ed.2d 82 (1979). The decision was also in accord with *Rapid Transit Advocates, Inc. v. Southern California Rapid Transit District* 752 F.2d 373 (U.S. Court of Appeals 9th Cir. 1985).

In *Duke v. Carolina* 438 U.S. 59 and *U.S. v. Scrap* 412 U.S. 669 the Court addressed standing in relation to problems of nuclear contamination and nationwide recycling programs. These are the only environmental cases cited by the plaintiff to be in conflict with the Appeals Courts' ruling. In contrast to the severe environmental problems addressed in *Duke* and *Scrap* the plaintiff in this case claimed standing based on allegations of increased traffic congestion and decreased property values, without, as the district court and Appeals Court determined, a showing of how these particular plaintiffs will be harmed by the change in use from a steel business to a bus garage.

The Court of Appeals clearly saw through the vagueness of the complaint, the lack of real environmental concerns and the manipulative behavior of Evanston in enacting its zoning change by stating in its opinion:

> "The complaint alleges that the property at 2424 Oakton Street is currently used as a steel business and is zoned for the M-4 Manufacturing District. The complaint also alleges that the use of property as a bus garage is not consistent with the comprehensive plans for the area and requires a special use permit.[2]
>
> The complaint on its face creates a problem in these particular circumstances. Considering the

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[2]The Agreement of Sale, attached to the complaint as Exhibit B, indicates that during the course of negotiations leading to the agreement the City of Evanston amended its zoning ordinance to change the use of the property as a bus garage from a permitted use to a special use.

present steel business use in light of nothing but some vague and general allegations of environmental harms, we cannot see why or how the new proposed use will not in fact be an environmental improvement. This case does not arise in a vacuum. The property is not a vacant lot. The existing use, a steel business, in not without considerable environmental impact of its own. In these circumstances the plaintiffs' complaint must clearly articulate a "distinct and palpable" injury in fact, within the zone of interests, which NEPA protects, that will result from the property's conversion from a steel manufacturing business, not ordinarily considered an environmental benefit, to a bus garage. See *Warth v. Seldin*, 442 U.S. at 501 (1975). Ordinarily, one would not consider a bus garage, in the typical location, to be environmentally detrimental, and UMTA/FHWA regulations therefore categorically exclude bus garages from the EIS requirement of NEPA. The plaintiffs do not suggest how or why the bus garage will generate more traffic than the going steel business, or that the character of the traffic, buses instead of trucks, will have some significant impact. The plaintiffs do not suggest how or why pollution, noise, or other supposed adverse environmental impacts will be increased by reason of the change from a steel business to a bus garage. It is, of course, not necessary to plead evidence, but in these particular circumstances the plaintiffs must provide some suggestions that this change causes particular and specific adverse environmental consequences affecting these plaintiffs.

The plaintiffs must demonstrate that their environmental concerns are not so insignificant that they ought to be disregarded altogether." *Robinson v. Knebel*, 550 F.2d 422, 425 (8th Cir. 1977)."

Therefore, the environmental concerns raised by the plaintiffs in the present case do not fall within the area of concerns raised in *Duke v. Carolina*. In *Duke* the Court was asked to determine questions of standing of citizens to question the use of nuclear power plants in close proximity

to the plaintiffs living and working environment. The complaint alleged effects of the operation of the plant to include production of radiation which would invade the air and water and an increase in the temperature of a nearby lake. These severe effects of the nuclear power plant were the type of injuries the Court deemed adequate to satisfy the "injury in fact" test.

To say that the issues raised in *Duke v. Carolina* and *U.S. v. Scrap* are similar to the environmental concerns raised by the plaintiffs in this case is ludicrous at best. The Seventh Circuit Court of Appeals saw through the sham argument of the plaintiffs and this Court should also do so by denying the Petition for Writ of Certiorari.

Therefore on the issue of standing, the Appellate Court clearly issued its ruling on principles established by this Court and not, as the plaintiff alleges, in conflict with this Court's prior decisions.

The plaintiff further claims that the facts as alleged should have entitled the plaintiff to proceed with their complaint. They allege that although jurisdiction and standing pursuant to 5 USC 702 (APA) were not pleaded, the court should have taken notice of the facts as pleaded to include the APA as a basis for jurisdiction and standing and the court should have granted the plaintiff leave to amend.

The plaintiffs claim the decision was in conflict with *Conley v. Gibson*, 355, U.S. 41, *Foman v. Davis*, 371, U.S. 178, *United States v. Haughman*, 364, U.S. 310 and *Havens v. Coleman*, 455, U.S. 363. The cases cited by plaintiff stand for the proposition that a complaint must be interpreted liberally and a mistake in pleading should not be used to extinguish a genuine right of a party.

Such is not the case in the present instance. As is stated above by the quotation from the Court of Appeals decision, the Court took into account the question of liberal allowances for pleading, but rejected the plaintiffs' environmental claims as *de miniumus*. Furthermore, even if

the Court had taken the plaintiffs' claim of jurisdiction and standing pursuant to the APA into account, if the statutes alleged as the basis for jurisdiction and standing (49 USC 1602 & 42 USC 4321) do not confer private rights of action, the allegation of jurisdiction pursuant to 5 USC 702 does not operate as an independent basis of jurisdiction. *Califano v. Sanders*, 430, U.S. 99 and *Valley Forge v. Americans United* 454 U.S. 464.

Furthermore, the plaintiff failed to seek leave to amend, but instead relied on its complaint in pursuing its action in the Appellate Court.

Therefore, contrary to the plaintiffs' claims the decision of the Seventh Circuit Court of Appeals was not in conflict with decisions of this Court, but was instead in accord with and based on decisions of this Court.

As a further inducement to this Court to deny the petition for certiorari, the matters raised by the complaint relating to the proposed use of the facility as a bus garage, and the denial of the special use permit are more properly issues which should be decided by local courts and of which this Court has traditionally kept a hands off policy. See *Larkin v. Grendels Den, Inc.* 459 U.S. 116, 103 S.Ct. 505, 74 L.Ed.2d 297 (1982).

II.

ARTICLE III STANDING

The issue before this Court is whether the City of Evanston, its mayor and alderman properly brought their claim before the district court by showing that they had "standing" to bring this action in the Federal Court.

Under Article III of the Constitution, federal courts do not have jurisdiction over a claim unless there is an "actual case or controversy." The standing doctrine is one component of the case or controversy requirement. See *Scott v. Rosenberg*, 702 F. 2d 1263 at 1267 (9th Cir. 1983)

cert denied 104 S.Ct. 1439 (1984). The policy concern behind the standing doctrine is that each party have "such a personal stake in the outcome of the controversy as to assure that concrete adverseness exists which sharpens the presentation of issues upon which the court so largely depends." *Baker v. Carr*, 369 U.S. 186, 7 L.Ed.2d 663 (1962)

An essential element of the standing requirement is that "the plaintiff . . . show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 at 99 60 Ed.2d 66 (1979)

This court has restated the test for standing in *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, (1982). In *Valley Forge* the Court held:

> " . . . at an irreducible minimum, Art III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant' . . . and that the injury 'fairly can be traced to the challenged action' and 'is likely to be redressed by a favorable decision'."

Furthermore, two additional elements necessary to properly allege standing when challenging an action of a federal or state agency are that the challenged action has caused the plaintiff injury in fact and that the interest sought to be protected by the complainant must arguably be within the zone of interests to be protected or regulated by the statute in question. *Preston v. Heckler*, 734 F.2d 1359 (1984)

The "statutes in question, alleged by the plaintiffs in their complaint to create standing are the Urban Mass Transportation Systems Act, 49 USC 1601 et seq (UMT Act) and the National Environmental Policy Act, 42 USC sec. 4321 et seq (NEPA).

The plaintiffs later claimed to have alleged enough facts to bring their complaint under the Administrative Procedure Act 5 USC sec. 702 (APA) although the APA was not alleged as a basis for jurisdiction or standing in their original complaint and the plaintiffs did not seek leave to amend. Notwithstanding the general rule that one cannot raise issues not addressed in the lower court for the first time on appeal see *Lektro Vend Corp. v. Vendo Co.* 545, F.2d 1050 (7th Cir. Ct. Appeals 1976), the plaintiffs claimed in their appeal to the Seventh Circuit Court of Appeals that jurisdiction under the APA was proper.

However, as this Court held in *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 US 464 at 487-88 N 24

> "Neither the Administrative Procedure Act, nor any other congressional enactment, can lower the threshold requirements of standing under Article III."

Furthermore, this Court in *Califano v. Sanders* 430 U.S 99 at 107 held:

> "We thus conclude that the APA does not afford an implied grant of subject matter jurisdiction permitting federal review of agency action."

Therefore, merely claiming injury due to a federal agency's action does not automatically clothe the claimant with Article III standing. The "injury in fact" and "personal stake in the outcome" test must still be addressed. The plaintiff must also meet the requirement that when claiming injury as a result of agency action, one must show that the interest sought to be protected by the complainant must be within the zone of interests to be protected or regulated by the statute.

The Seventh Circuit took into account the tests addressed in *Baker v. Carr* 369 U.S. 186, *Gladstone Realtors v. Village of Bellwood* 441 U.S. 91, and *Valley Forge v. Americans United* 454 U.S. 464. They correctly applied

the issues raised in the complaint to those tests and determined that the plaintiffs failed to allege a sufficient injury in fact or personal stake in the outcome.

Notwithstanding the plaintiffs failure to pass the injury in fact and personal stake in the outcome tests to determine standing, the plaintiffs had an additional burden to meet. That of showing that the statutes allegedly violated by UMTA created private rights of action, and that if a right is conferred by the statute, that the interest sought to be protected is within the zone of interest to be protected by the statute.

The Seventh Circuit addressed those issues and basing their decision on law as established by this Court correctly determined that the plaintiffs lacked Article III standing.

III.

STANDING UNDER THE UMT ACT

The district court and the Seventh Circuit Court of Appeals correctly held that the UMT Act does not create a private right or action and none can be implied.

The lower courts correctly followed this courts' holdings in *Merrill Lynch, Pierce, Fenner & Smith v. Curran* 456 U.S. 353 at 377-78 (1982) and in *Cort v. Ash* 422 U.S. 66 at 78 (1975) that in determining whether a private right of action can be implied, a court must look to the intentions of Congress in enacting the statute.

"In determining Congressional intent, the language of the statute and its legislative history should first be examined." *California v Sierra Club,* 451 U.S. 287, 297-98 101 S.Ct. 1775, 1781 68 L.Ed. 101 (1981) "If they do not suggest the statute was intended to create federal rights for the special benefit of a particular class of persons, it is unnecessary to inquire into such other factors as whether availability of a private remedy would further the statutory purpose." See *California v Sierra Club,* 451 U.S. at 297-98.

This Court has drawn a distinction between statutes whose language focuses on a right granted to a benefitted class of persons; where a private cause of action is generally found and statutes framed as "general prohibition or command to a federal agency"; where a cause of action is seldom implied. In *Universities Research Ass'n, Inc. v Coutu*, 450 U.S. 754, 772, 101 S.Ct. 1451, 1462, 67 L.Ed.2d 662 (1981), the Court declined to imply a private right of action under the Davis-Bacon Act, which requires contracts for government work to contain minimum wage stipulations. Though clearly intended to benefit employees, the statute did not confer rights directly on the employees, but instead imposed obligations on federal contracting agencies. In the words of the Court, the statute was "simply phrased as a directive to federal agencies engaged in the disbursement of public funds.' " quoting *Cannon v University of Chicago*, 441 U.S. 677, 693 99 S.Ct. 1946, 1955 60 L.Ed.2d 560 (1979).

The provisions of the UMT Act the instant plaintiffs allege were violated do not focus on the rights of particular persons but on duties of the federal administrators of the program and of the applicants for assistance.

A Ninth Circuit case, *Rapid Transit Advocates, Inc. v. Southern California Rapid Transit District*, 752 F.2d 373 (US Ct Appeals 9th Cir.) (1985) is directly on point with the plaintiffs' claim of standing under the UMT Act. In that case, the court held that where the plaintiffs attempted to block a decision by the Urban Mass Transit Administration to grant federal funds for the design and engineering of a mass transit system they could not proceed because neither 49 USC 1601 (UMT) Act) nor 42 USC sec. 4321 (NEPA) created private remedies and none could be implied.

Therefore, the plaintiffs lack standing to invoke the courts' jurisdiction pursuant to 49 USC 1601 (UMT Act) because that act does not create a private remedy as the Court of Appeals correctly ruled.

IV.

STANDING UNDER THE NEPA

Plaintiffs further allege that they have been injured by UMTA's failure to prepare an Environmental Impact Statement or otherwise to take into account the effects on the environment of a bus garage at the property purchased with the grant money. To successfully invoke the courts' jurisdiction the plaintiffs must go through the same analysis of NEPA as the UMT Act to determine Congressional intent regarding whether NEPA creates private rights of action, and if so, whether the plaintiff can show that he personally suffered actual or threatened harm as a result of the conduct of the defendant, whether the injury fairly can be traced to the challenged action, whether the injury is likely to be redressed by a favorable decision and lastly whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute in question *Preston v Heckler*, 734 F.2d 1359 (1984)

As was discussed earlier herein, the Ninth Circuit Court of Appeals in *Rapid Transit Advocates, Inc. v Southern California Rapid Transit District*, 752 F.2d 373 has held that 42 USC 4332 does not create private rights of action and none is implied.

The Seventh Circuit Court of Appeals ruled that NEPA 42 USC 4332 may create a private right of action but determined that the City of Evanston, its mayor and alderman had not satisfied other requirements of standing to be able to successfully invoke the Courts' jurisdiction.

The Appeals Court also looked to the language of 42 USC 4332 (2) (c) in which an environmental impact statement must be prepared on all major federal actions significantly affecting the quality of the human environment.

The Court of Appeals saw through the basic flaw of the plaintiffs' claim of environmental harm. What harm to the environment could come from changing the use of a

facility from a steel business to a bus garage? The court correctly ruled that the plaintiffs' claim of environmental harm should be disregarded.

A careful reading of plaintiffs' complaint and their petition for certiorari discloses their true claim of damage and it is clearly non-environmental. The plaintiff, City of Evanston, will lose property tax revenues as a result of the ownership of the property by a municipal corporation. This allegation is clearly not within the zone of interest to be protected by NEPA and this bare claim could not legally stand alone as the basis for Evanston changing its zoning ordinance to require the Suburban Bus Division of the Regional Transportation Authority to apply for a special use permit, let alone stand as the basis for standing in this action.

V.

TAXPAYER STANDING

The plaintiffs cannot claim as a basis for standing their position as taxpayer, although their claims of damage by overpayment of a fair price and misappropriation of federal funds would indicate their reliance on that status as a basis for standing.

The decision of the Court of Appeals was directly based on this Court's ruling in *Valley Forge v. Americans United*, 454 U.S. 464 and *Flast v. Cohen*, 392 U.S. 83 wherein it was held that taxpayer standing is limited to constitutional challenges directed at congressional actions. The grant by UMTA to the Regional Transportation Authority is a use of federal funds involving no congressional action.

CONCLUSION

The plaintiffs' petition for writ of certiorari should be denied. The decision of the Seventh Circuit Court of Appeals affirming the district courts order of dismissal due to lack of standing was proper and was based on long established principles of standing having its root in Article III of the Constitution.

The statutes which the plaintiffs claim were violated do not create private rights of action and none are implied. The plaintiffs lack standing as taxpayers.

For the above and foregoing reasons, the Regional Transportation Authority and Pace, Suburban Bus Division of the Regional Transportation Authority requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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